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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/591,437	06/09/2000	Jiuzhi Xue	DIS-P016	3249
27313	7590	08/24/2005	EXAMINER	
MARSH FISCHMANN & BREYFOGLE, LLP			DUONG, THOI V	
3151 S. VAUGHN WAY				
SUITE 411			ART UNIT	
AURORA, CO 80014			2871	
			PAPER NUMBER	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/591,437	XUE ET AL.	
	Examiner	Art Unit	
	Thoi V. Duong	2871	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 03 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 13.

Claim(s) objected to: 11.

Claim(s) rejected: 1-10, 12 and 14-26.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

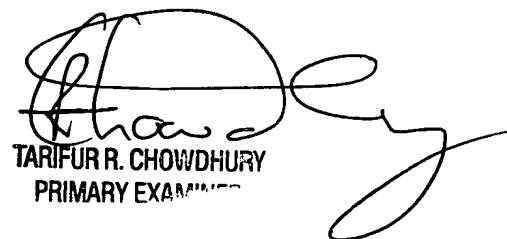
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive.

Applicant argued that "surfaced stabilized" is widely used in the ferroelectric liquid crystal art since the examiner feels a skilled practitioner would have difficulty with the limitation "wherein the ferroelectric liquid crystal material in the optical device is surface stabilized" recited in claim 25. The Examiner realizes that the surface stabilized ferroelectric liquid crystal (SSFLC) is widely used as disclosed in USPN 6,141,076 to Liu (col. 1, lines 12-21). However, in consideration with other limitations in claim 25, the Examiner maintains the rejection of claim 25 since the SSFLC comprising a structure free of chevron without a need to otherwise apply an additional treatment to the optical device is not conventional. Liu discloses a similar structure free of chevron with the claimed invention and alignment treatment is only treatment; however, Liu's disclosure directs to a non-surface-stabilized ferroelectric liquid crystal instead of a surface-stabilized FLC of the claimed invention. Affidavits or declarations of attacking the operability of a patent cited as a reference must rebut the presumption of operability by a preponderance of the evidence (MPEP 716.07).

Applicant also argued that Liu never states or even implies that a structure created with cross-buffing is free of chevrons. the Examiner disagrees since Liu discloses a problem in Prior Art where a typical SSFLC creates a "chevron" structure which resulted in a high transmission loss (col. 1, lines 25-34 and col. 4, lines 36-46). Liu then overcomes the problem by providing a ferroelectric liquid crystal structure wherein excellent contrast is obtained with cross-buffing (col. 4, lines 47-60). Moreover, since the structure of Liu is substantially identical to that of claims 1 and 14, claimed properties or functions are presumed to be inherent (MPEP 2112.01). Thus, the structure of Liu created with cross-buffing is inherently free of chevron.



TARIFUR R. CHOWDHURY
PRIMARY EXAMINER